

**EXHIBIT A**



T19SA00137

JESSE R. CALLAHAN  
ATTORNEY AT LAW

201 N. Central Avenue  
22<sup>nd</sup> Floor  
Phoenix, AZ 85004-0608  
Direct Dial: 602-774-3506  
Office: 602-252-1900  
Facsimile: 602-252-1114  
jcallahan@maypotenza.com  
www.maypotenza.com



April 1, 2019

**VIA EMAIL TRANSMISSION AND HAND-DELIVERY**

Russlyn Wells  
Steve Shields  
Carolyn Laurie  
City of Tucson  
Planning & Development Services  
Department  
201 N. Stone Avenue  
Tucson, Arizona 85701  
[Russlyn.Wells@tucsonaz.gov](mailto:Russlyn.Wells@tucsonaz.gov)  
[Steve.Shields@tucsonaz.gov](mailto:Steve.Shields@tucsonaz.gov)  
[Carolyn.laurie@tucsonaz.gov](mailto:Carolyn.laurie@tucsonaz.gov)

RE: Application of Zoning Certification Determination for  
1525 N. Park Avenue  
Parcel ID No. 123-150-70A & 123-15-0720 (the "Property")  
CHAA: 108 Zoning: C-2 Activity #: T17SA0033 and  
T18SA00085

Dear Ms. Wells:

Thank you for your letter dated March 26, 2019. Please consider this letter a written application for a zoning determination (the "Request") relating to the Property pursuant to section 1.5.1 of the Unified Development Code (the "UDC"). I have enclosed a check for the required fee amount of \$236.50.

In support of this application, please find enclosed as **Exhibit 1** letters and related attachments clearly demonstrating that locating a medical marijuana dispensary at the Property violates Ordinances 10850, 11199, 11346, and 11612. The letters and attachments also contain the information required by section 1.5.1.B.1 of the UDC for this application. In addition, please note that we verified with COPE Community Services, Inc. that they are, in fact, a state-licensed substance abuse facility providing overnight treatment to patients.

For ease of review, here is the following information pursuant to section 1.5.1.B.1 of the UDC:

**Name and Address of Party Requesting Determination:**

Rashad J. Stocker  
1336 N. 2<sup>nd</sup> Ave.  
Tucson, Arizona 85705

**UDC Section Requiring Clarification, or Substantive Policy Statement Requiring Determination or Clarification:**

- Ordinance Nos. 10850 (Land Use Code sections 2.5.4 and 2.5.5), 11199 (UDC section 4.9.9), 11346 (UDC section 4.9.9), and 11612 (UDC section 4.9.9). Please also see **Exhibit 1** enclosed herein.

**Whether Issues Are Currently in Consideration by the City with a Pending Application:**

- Upon information and belief, an application for a dispensary location at the Property was submitted on or about March 26, 2019. *See* Application No. T19SA00122.

**Parties of Record:**

- Notice of this Request will also be provided contemporaneously to Total Accountability Patient Care, Inc. and Franti III Holdings, LLC.

Please note that as stated in the City of Tucson Fact Sheet regarding medical marijuana dispensaries, it is the burden of the *applicant* proposing to use a location for a medical marijuana dispensary to demonstrate that the proposed location complies with controlling Ordinances. It is not the burden of the Planning & Development Services Department, or my client, to do so.

The request is respectfully made that upon consideration of this letter and its enclosures the Zoning Administrator makes a determination that a medical marijuana dispensary may not be located at the Property.

Please note that this correspondence is made with an express reservation of rights, and no statement made herein shall constitute or be construed as a waiver or admission of any legal or equitable claim or defense otherwise held by Rashad J. Stocker.

Russlyn Wells  
April 1, 2019  
Page 3

I would be happy to meet with you at your convenience to discuss this application. If you have any questions, please do not hesitate contact me. Thank you for your consideration.

Sincerely,

MAY, POTENZA, BARAN & GILLESPIE, P.C.



Jesse R. Callahan, Esq.

JRC/el

cc:

Piroschka Glinsky, City Attorney's Office,

[Piroschka.Glinsky@tucsonaz.gov](mailto:Piroschka.Glinsky@tucsonaz.gov)

Mike Rankin, City Attorney's Office,

[mike.rankin@tucsonaz.gov](mailto:mike.rankin@tucsonaz.gov)



# EXHIBIT 1

JESSE R. CALLAHAN  
ATTORNEY AT LAW

201 N. Central Avenue  
22<sup>nd</sup> Floor  
Phoenix, AZ 85004-0608  
Direct Dial: 602-774-3506  
Office: 602-252-1900  
Facsimile: 602-252-1114  
jcallahan@maypotenza.com  
www.maypotenza.com



March 22, 2019

VIA EMAIL TRANSMISSION AND HAND-DELIVERY

Steve Shields  
Carolyn Laurie  
City of Tucson  
Planning & Development Services  
201 N. Stone Avenue  
Tucson, Arizona 85701  
[Steve.Shields@tucsonaz.gov](mailto:Steve.Shields@tucsonaz.gov)  
[Carolyn.laurie@tucsonaz.gov](mailto:Carolyn.laurie@tucsonaz.gov)

RE: Medical Marijuana Authorization Letter  
1525 N. Park Avenue  
Parcel ID No. 123-150-70A & 123-15-0720 (the "Property")  
CHAA: 108 Zoning: C-2 Activity #: T17SA0033 and  
T18SA00085

Dear Mr. Shields:

The Planning and Development Services Department ("PDSD") previously found the above-referenced site to be in compliance with Ordinance Nos. 10850, 11199, and 11346 and issued a letter on March 9, 2018, granting Total Accountability Patient Care, Inc. (the "Applicant") permission to construct a medical marijuana dispensary (the "Authorization Letter"). Such permission expired one year from its issuance, and PDSD must again review and decide whether to authorize the approval. This letter is to advise you that locating a medical marijuana dispensary on the Property violates Ordinance Nos. 10850, 11199, 11346, and 11612, and should authorization be again unlawfully granted by PDSD, the lawsuit enclosed as Exhibit A shall be filed.

Pursuant to Ordinance Nos. 10850, 11199, 11346, and 11612, medical marijuana dispensaries must be 1000 feet from a "church" and 2000 feet "from a licensed residential substance abuse diagnostic and treatment facility" and "drug or alcohol rehabilitation facility". The City was on notice that The Drikung Dzogchen Center of Arizona, a Buddhist "church" is located within 1000 feet of the proposed dispensary location, and within 2000 feet of a drug or alcohol rehabilitation facility operated by COPE Community Services, Inc.

Steve Shields  
Carolyn Laurie  
March 22, 2019  
Page 2

See letters dated February 23, 2018, and March 12, 2018, enclosed herein as Exhibits B and C.

According to the City of Tucson Fact Sheet concerning medical marijuana dispensaries, "[i]t is the responsibility of the applicant to research the uses on the surrounding properties and accurately identify the distances and separations as required. Failure to accurately document surrounding uses may result in the revocation of any zoning compliance. The applicant shall provide information explaining what methods were used to identify the surrounding uses and distances."


The Applicant had the responsibility, but clearly failed, to accurately identify the separations required by law. Should the Applicant seek reauthorization, the City is on clear notice of the deficiencies with the Property's proposed use as a medical marijuana dispensary. To issue authorization and permission to construct a medical marijuana dispensary on the Property would clearly be contrary to law, and thus arbitrary, capricious, and an abuse of discretion. In that instance, we would have no choice but to proceed with filing the complaint enclosed herein.

Accordingly, I respectfully ask you to consider the foregoing points and decline to approve any further application for authorization to construct a medical marijuana dispensary on the Property. If I do not receive confirmation from you that the City has or will decline to approve such application by March 30, 2019, we will proceed with filing the enclosed complaint. If you have any questions, please contact me.

Please note that this correspondence is made with an express reservation of rights, and no statement made herein shall constitute or be construed as a waiver or admission of any legal or equitable claim or defense otherwise held by Rashad J. Stocker.

Sincerely,

MAY, POTENZA, BARAN & GILLESPIE, P.C.



Jesse R. Callahan, Esq.

JRC/el



Steve Shields  
Carolyn Laurie  
March 22, 2019  
Page 3

cc:  
Piroshchka Glinsky, City Attorney's Office,  
[Piroshchka.Glinsky@tucsonaz.gov](mailto:Piroshchka.Glinsky@tucsonaz.gov)  
Mike Rankin, City Attorney's Office,  
[mike.rankin@tucsonaz.gov](mailto:mike.rankin@tucsonaz.gov)

# EXHIBIT A



1 Jesse R. Callahan (025393)  
2 Grant L. Cartwright (030780)  
3 **MAY, POTENZA, BARAN & GILLESPIE, P.C.**  
4 201 North Central Avenue, 22<sup>nd</sup> Floor  
5 Phoenix, AZ 85004-0608  
6 Telephone: (602) 252-1900  
7 Facsimile: (602) 252-1114  
8 Email: icallahan@maypotenza.com  
9 Email: gcartwright@maypotenza.com  
10 *Attorneys for Plaintiff*

11  
12  
13 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

14 **IN AND FOR THE COUNTY OF PIMA**

15 RASHAD J. STOCKER, an individual,  
16  
17 Plaintiff,

Case No. \_\_\_\_\_

18 v.

19 CITY OF TUCSON, an Arizona  
20 municipal corporation; CITY OF  
21 TUCSON PLANNING AND  
22 DEVELOPMENT SERVICES  
23 DEPARTMENT, an official body of the  
24 City of Tucson,

25 Defendants.

26 **VERIFIED COMPLAINT FOR**  
27 **SPECIAL ACTION AND**  
28 **DECLARATORY RELIEF**

For its Complaint for Special Action and Declaratory Relief against Defendants, Plaintiff alleges:

1. Rashad J. Stocker ("Rashad") is an individual who lives at 1336 N. 2<sup>nd</sup> Ave., Tucson, Arizona 85705.
2. Defendant City of Tucson is an Arizona municipal corporation located in Pima County, Arizona.
3. Defendant City of Tucson Planning and Development Services



1 Department (the "PDSD") is an official body designated by Defendant City of Tucson  
2 to process applications for medical marijuana dispensary locations.

3 4. Total Accountability Patient Care, Inc. ("Total Accountability") is an  
4 Arizona limited liability company doing business in Pima County, Arizona.

5 5. Total Accountability operates a medical marijuana dispensary located at  
6 226 E. 4<sup>th</sup> Street, Benson, Arizona with offices at 1718 E. Speedway #146, Tucson,  
7 Arizona, 85719, and is currently actively building a medical marijuana dispensary  
8 at the Property in violation of the City of Tucson Ordinance No. 10850 ("Ordinance  
9 10850"), Ordinance No. 11199 ("Ordinance 11199"), Ordinance No. 11346  
10 ("Ordinance 11346"), and Ordinance No. 11612 ("Ordinance 11612").

11 6. Franti III Holdings, LLC ("Franti") is an Arizona limited liability  
12 company doing business in Pima County, Arizona.

13 7. Franti owns or hold the beneficial ownership of the Property.

14 8. Jurisdiction and venue are proper in this Court.

15 **FACTS COMMON TO ALL COUNTS**

16 9. This complaint relates to the construction of a medical marijuana  
17 dispensary on real estate located at 1525 N. Park Avenue in Tucson, Arizona (the  
18 "Property").

19 10. On February 23, 2018, Total Accountability submitted its Planning and  
20 Development Services Department Zoning Compliance Application (the "2018  
21 "Application").

22 11. A true and correct copy of the 2018 Application is attached hereto as  
23 **Exhibit A.**

24 12. On March 9, 2018, the PDSD sent Total Accountability a Medical  
25 Marijuana Authorization Letter (the "2018 Authorization Letter") granting Total  
26 Accountability permission to obtain city permits to construct a medical marijuana  
27 dispensary location at the Property.

28 13. A true and correct copy of the Authorization Letter is attached hereto as

1 **Exhibit B.**

2 14. On \_\_\_\_\_ 2019, Total Accountability submitted another Planning and  
3 Development Services Department Zoning Compliance Application (the "2019  
4 Application," and together with the 2018 Application, the "Applications")

5 15. A true and correct copy of the 2019 Application is attached hereto as

6 **Exhibit C.**

7 16. On \_\_\_\_\_ 2019, the PDSO sent Total Accountability a Medical  
8 Marijuana Authorization Letter (the "2019 Authorization Letter," and together with  
9 the 2018 Authorization Letter, the "Letters") granting Total Accountability  
10 permission to obtain city permits to construct a medical marijuana dispensary  
11 location at the Property.

12 17. A true and correct copy of the 2019 Authorization Letter is attached  
13 hereto as **Exhibit D.**

14 18. Rashad is aggrieved by the decision of the PDSO in approving the  
15 Property to be used for a medical marijuana dispensary because the Applications are  
16 in violation of the Ordinances 10850, 11199, 11346, and 11612. As such, Rashad has  
17 standing to assert the claims set forth in this statutory special action and application  
18 for stay.

19 I. **The PDSO acted in an arbitrary and capricious manner and abused**  
20 **its discretion by granting the Applications, and must revoke the**  
21 **authorization letters, because a "Church" is located within 1000**  
22 **feet of the property, violating ordinances 10850, 11199, 11346, and**  
23 **11612.**

24 19. The City of Tucson Fact Sheet concerning medical marijuana  
25 dispensaries states, "[i]t is the responsibility of the applicant to research the uses on  
26 the surrounding properties and accurately identify the distances and separations as  
27 required. Failure to accurately document surrounding uses may result in the  
28 revocation of any zoning compliance. The applicant shall provide information  
explaining what methods were used to identify the surrounding uses and distances."

1 See Fact Sheet attached hereto as Exhibit E.

2 20. The medical marijuana applicant bears the responsibility to provide the  
3 PDSO with accurate information on the surrounding properties to comply with  
4 Ordinance Nos. 10850, 11199, 11346, and 11612. *Id.*

5 21. Ordinance 10850 prohibits a medical marijuana dispensary to be within  
6 1000 feet from a "Church." Ordinance 10850 at p. 10.

7 22. Ordinance 10850 defines "Church" to mean "a building which is erected  
8 or converted for use as a church, where services are regularly convened which is used  
9 primarily for religious worship and schooling and which a reasonable person would  
10 conclude is a church by reason of design, signs or other architectural features."  
11 Ordinance 10850 at p. 11.

12 23. Ordinance 11199 similarly requires a medical marijuana dispensary to  
13 be 1000 feet from a "Church," and defines "Church" the same way as Ordinance  
14 10850. Ordinance 11199 at p. 4.

15 24. Ordinance 11346 similarly requires a medical marijuana dispensary to  
16 be 1000 feet from a "Church," and defines "Church" the same way as Ordinance  
17 10850. Ordinance 11346 at p. 4.

18 25. Ordinance 11612 similarly requires a medical marijuana dispensary to  
19 be 1000 feet from a "Church," and defines "Church" to mean "a building that is  
20 erected or converted for use as a church, temple, synagogue or mosque, where  
21 services are regularly convened that is used primarily for religious worship and  
22 schooling and that a reasonable person would conclude is a church by reason of  
23 design, signs, or other architectural features." Ordinance 11612 at p. 3.

24 26. The Drikung Dzogchen Center of Arizona is located at 1038 E. Lester St.,  
25 Tucson, Arizona 85719 (the "Center").

26 27. As seen in Google Maps, the Center is within 1000 feet of the Property.  
27 See Google Maps Screenshot attached hereto as Exhibit F.

28 28. Upon information and belief, since 2014 the Center has regularly



1 convened religious worship services and schooling at its location, as confirmed on  
2 social media pages. See Pamphlet from Center attached hereto as Exhibit G.

3 29. The Center is used primarily for religious worship; individuals practicing  
4 Buddhism convene there regularly for religious worship. See screenshots of websites  
5 on the Center attached hereto as Exhibit H.

6 30. A reasonable person under the definition of "Church" in Ordinances  
7 10850, 11199, 11346, and 11612 would conclude the Center is a "Church" based on  
8 its architecture, symbols, designs, and other religious indicia of a "Church." See  
9 photos of the Center attached hereto as Exhibit I.

10 31. Relying on Google Maps, the Applications include First Christian School  
11 and Siloam Freewill Church, as the only qualifying "Churches" nearby, incorrectly  
12 omitting the Center. See Google Maps Screenshot attached hereto as Exhibit J.

13 32. PDSD enforces the requirements to maintain a 1000-foot setback from  
14 "Churches" when they are Judeo-Christian. See Medical Marijuana Authorization  
15 Letter to ALFA Delta Foundation attached hereto as Exhibit K (noting Jewish  
16 temple and Christian parish may not be within 1000 feet of planned dispensary).

17 33. Ordinances 10850, 11199, 11346, and 11612 make no distinction  
18 between Judeo-Christian churches and Buddhist places of worship.

19 34. Because the Property is within 1000 feet of a "Church," it cannot be the  
20 location for a medical marijuana dispensary under Ordinances 10850, 11199, 11346,  
21 and 11612.

22 35. Accordingly, PDSD was required to deny the Application, and must  
23 revoke the Authorization Letters immediately.

24 36. PDSD's refusal to deny the Applications was arbitrary, capricious, and  
25 an abuse of discretion.

26 **II. The PDSD acted in an arbitrary and capricious manner and abused**  
27 **its discretion by granting the Applications, and must revoke the**  
28 **authorization letters, because a "Residential Substance Abuse**  
**Diagnostic and Treatment Facility or Other Licensed Drug or**  
**Rehabilitation Facility" is located within 2000 feet, violating**  
**ordinances 10850, 11199, 11346, and 11612.**

1        37. Ordinance 10850 requires that a “medical marijuana dispensary shall be  
2 setback . . . a minimum 2000 feet from a licensed residential abuse diagnostic and  
3 treatment facility or other licensed drug or alcohol rehabilitation facility.” Ordinance  
4 10850 at p. 10.

5        38. Ordinance 11199 similarly requires a medical marijuana dispensary to  
6 be 2000 feet from a “residential abuse and treatment facility or other licensed drug  
7 or alcohol rehabilitation facility.” Ordinance 11199 at p. 4.

8        39. Ordinance 11346 similarly requires a medical marijuana dispensary to  
9 be 2000 feet from a “residential abuse and treatment facility or other licensed drug  
10 or alcohol rehabilitation facility.” Ordinance 11346 at p. 4.

11       40. Ordinance 11612 similarly requires a medical marijuana dispensary to  
12 be 2000 feet from a “residential abuse and treatment facility or other licensed drug  
13 or alcohol rehabilitation facility.” Ordinance 11612 at p. 3. Such facilities under the  
14 Ordinances are hereinafter referred to as “Treatment Facilities.”

15       41. COPE Community Services, Inc. (“COPE”) operates a Treatment Facility  
16 located at 535 E. Drachman, Tucson, Arizona 85705, which location is approximately  
17 1,675 feet from the Property. See Google Maps attached hereto as Exhibit L.

18       42. Upon information and belief, COPE offers residential substance abuse  
19 treatment where patients have the ability to stay overnight at the Treatment  
20 Facility.

21       43. The Applications state that the closest Treatment Facility is located over  
22 3500 feet away. See Exhibit A.

23       44. But, that representation is clearly false, as a simple search with the  
24 Arizona Department of Health Services (“AZDHS”) confirms that COPE operates a  
25 Treatment Facility at 535 E. Drachman, Tucson, AZ 85705.

26       45. COPE’s license states that it offers behavioral health services including  
27 providing “services for persons who are at risk of having psychiatric disorders,  
28 *harmful involvement with alcohol or other drugs*, or other addictions or who have

1 behavioral health needs.” See COPE License attached hereto as Exhibit J  
2 (emphasis supplied).

3 46. COPE’s website sets forth that “COPE provides residential services to  
4 adults with serious mental illness and those who have other behavioral health  
5 and/or *substance abuse issues*.” See  
6 [http://www.copecommunityservices.org/services/behavioral-services/residential-  
8 services/](http://www.copecommunityservices.org/services/behavioral-services/residential-<br/>7 services/) (emphasis supplied).

9 47. Because the Property is within 2000 feet of a Treatment Facility, it  
10 cannot be the location for a medical marijuana dispensary under Ordinances 10850,  
11 11199, 11346, and 11612.

12 48. Accordingly, PDSD was required to deny the Applications, and must  
13 revoke the Authorization Letters immediately.

#### 14 COUNT ONE

##### 15 (Special Action)

16 49. Rashad incorporates the foregoing allegations as if fully set forth herein.

17 50. By this special action, Rashad seeks to challenge the above-described  
18 actions of PDSD.

19 51. Rashad lacks any other plain, speedy, and adequate remedy at law to  
20 address this dispute.

21 52. Authorization for the construction at the Property violates the set-back  
22 requirements of Ordinance Nos. 10850, 11199, 11346, and 11612 relating to churches  
23 and rehabilitation centers.

24 53. PDSD’s refusal to deny the Application is arbitrary, capricious, and an  
25 abuse of discretion.

#### 26 COUNT TWO

##### 27 (Declaratory Relief)

28 54. Rashad incorporates the foregoing allegations as if fully set forth herein.

55. An actual, justiciable controversy exists between Rashad and PDSD



1 relating to PDSD's authorization of a medical marijuana dispensary to be  
2 constructed at the Property.

3 56. Pursuant to A.R.S. §§ 12-1831 to 12-1846 and A.R.S. §§ 12-3001 *et seq.*,  
4 Rashad is entitled to a declaration that the construction of a medical marijuana  
5 facility at the Property would be in violation of Ordinances 10850, 11199, 11346, and  
6 11612.

7 WHEREFORE, Plaintiff Rashad asks the Court:

8 A. To stay the effect of any Authorization Letters issued by the PDSD and  
9 enjoin, stay, and prohibit the construction of a medical marijuana dispensary at the  
10 Property;

11 B. For a judgment declaring that an Authorization Letters may not be  
12 issued by the PDSD relating to the Property, or, if issued, a judgment revoking the  
13 Authorization Letters;

14 C. For Plaintiff's attorney fees and costs in an amount not less than  
15 \$5,000.00 in the event of default, pursuant to Special Action Rules of Procedure 4(g)  
16 and A.R.S. § 12-348; and

17 D. Such other and further relief deemed just and proper under the  
18 circumstances.

19  
20 DATED March 28, 2019.

21 MAY, POTENZA, BARAN & GILLESPIE, P.C.

22 By \_\_\_\_\_  
23 Jesse R. Callahan  
24 Grant L. Cartwright  
25 *Attorneys for Plaintiff*  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

Dated March \_\_, 2019.

9



# EXHIBIT B



JESSE R. CALLAHAN  
ATTORNEY AT LAW

201 N. Central Avenue  
22<sup>nd</sup> Floor  
Phoenix, AZ 85004-0608  
Main Number: 602-252-1900  
Facsimile: 602-252-1114  
jcallahan@maypotenza.com  
www.maypotenza.com



February 23, 2018

VIA EMAIL TRANSMISSION AND REGULAR U.S. MAIL

Steve Shields  
Carolyn Laurie  
City of Tucson  
Planning & Development Services  
201 N. Stone Avenue  
Tucson, Arizona 85701  
[Steve.Shields@tucsonaz.gov](mailto:Steve.Shields@tucsonaz.gov)  
[Carolyn.Laurie@tucsonaz.gov](mailto:Carolyn.Laurie@tucsonaz.gov)

RE: Medical Marijuana Authorization Letter  
1525 N. Park Avenue  
Parcel ID No. 123-150-70A & 123-15-0720  
CHAA: 108 Zoning: C-2 Activity #: T17SA0033 and T18SA00085

Dear Mr. Shields and Ms. Laurie:

We understand that, based on the representations made by David Basila and Total Accountability Patient Care, Inc. (the "Applicant"), the City found that the above-referenced site ("Site") is in general compliance with Ordinance Nos. 10850, 11199, and 11346 and is subject to the conditions of approval for use as a medical marijuana dispensary. Unfortunately, the materials provided to the City by the Applicant omitted that a church (a place of worship) appears to be located within 1,000 feet of the Site, which could prohibit use of the Site as a medical marijuana dispensary.

As set forth in the City's file, on or about January 16, 2017, the Applicant represented in correspondence to the City that its due diligence included having "driven the surroundings, checked Google maps, Pima County GIS maps" and the only churches nearby, as alleged by the Applicant, were the First Christian School and Siloam Freewill Church. This representation by the Applicant appears to us to have been inaccurate, because the Drikung Dzogchen Center of Arizona is located at 1038 E. Lester St., Tucson, AZ 85719 (the "Buddhist Church"). The designation of the Buddhist Church as a place of worship is confirmed by Google Maps (enclosed herewith for your convenience). We believe this Buddhist Church has been regularly convening religious worship since 2014.

Steve Shields  
Carolyn Laurie  
February 23, 2018  
Page 2

There is no distinction between Judeo-Christian churches and Buddhist churches, or large churches and small churches. The Buddhist Church conducts regularly convened religious worship and schooling at its location, as confirmed on its social media pages. By reason of its design and other architectural features, the Buddhist Church appears to meet the requirements under the Tucson zoning code to qualify as a church. We are surprised that the Applicant missed this church, especially given its search of Google Maps.

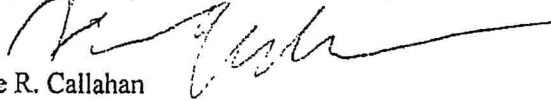
To date, we believe that Arizona Department of Health Services has not issued an Approval to Operate for this Site. We ask that the City further investigate the existence of the Buddhist Church in relation to this Site as soon as is practicable, especially before any renewal of the expired letter is issued.

If you have any questions regarding the foregoing, please contact me.

Sincerely,

MAY, POTENZA, BARAN & GILLESPIE, P.C.

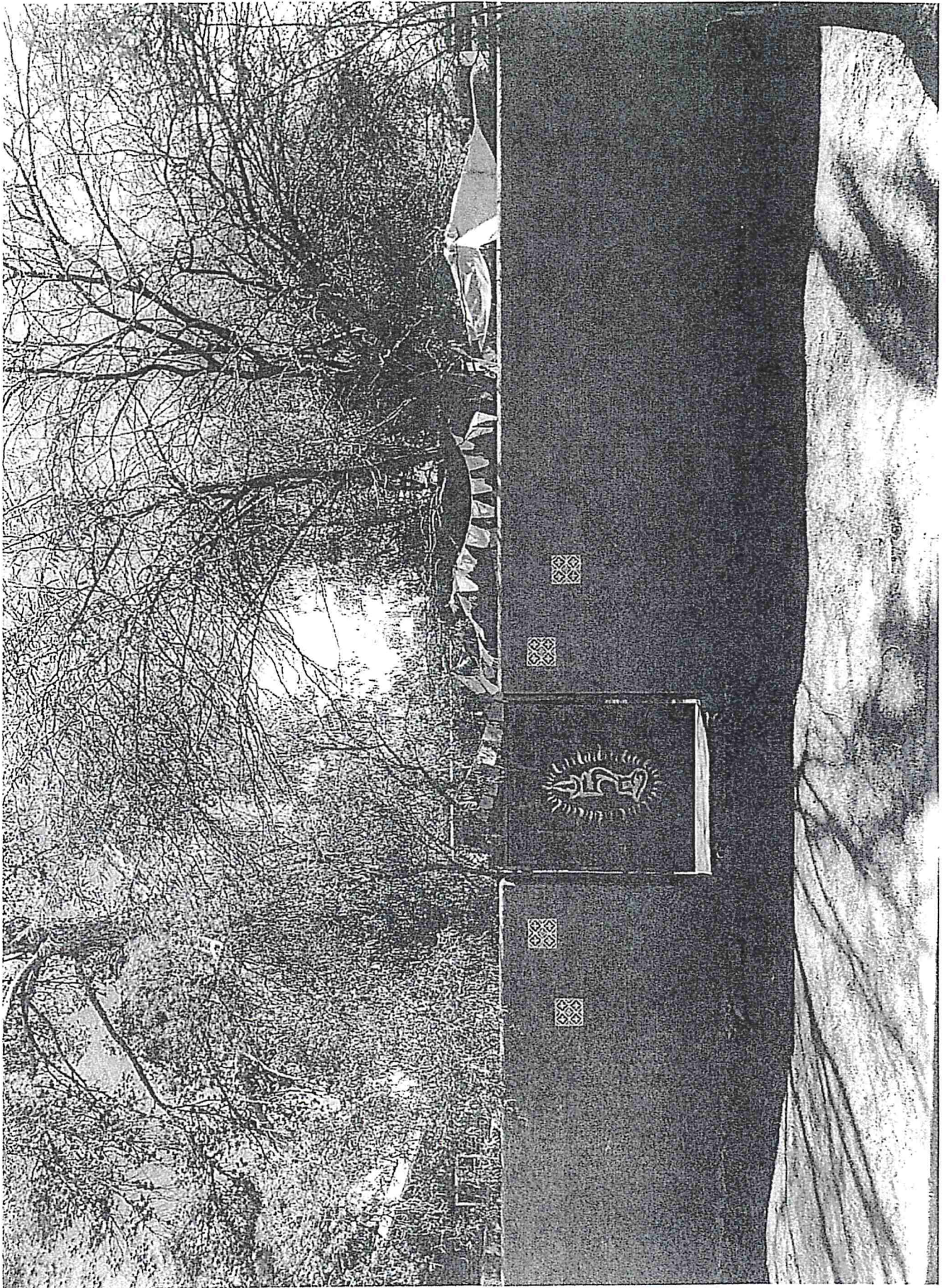
Jesse R. Callahan



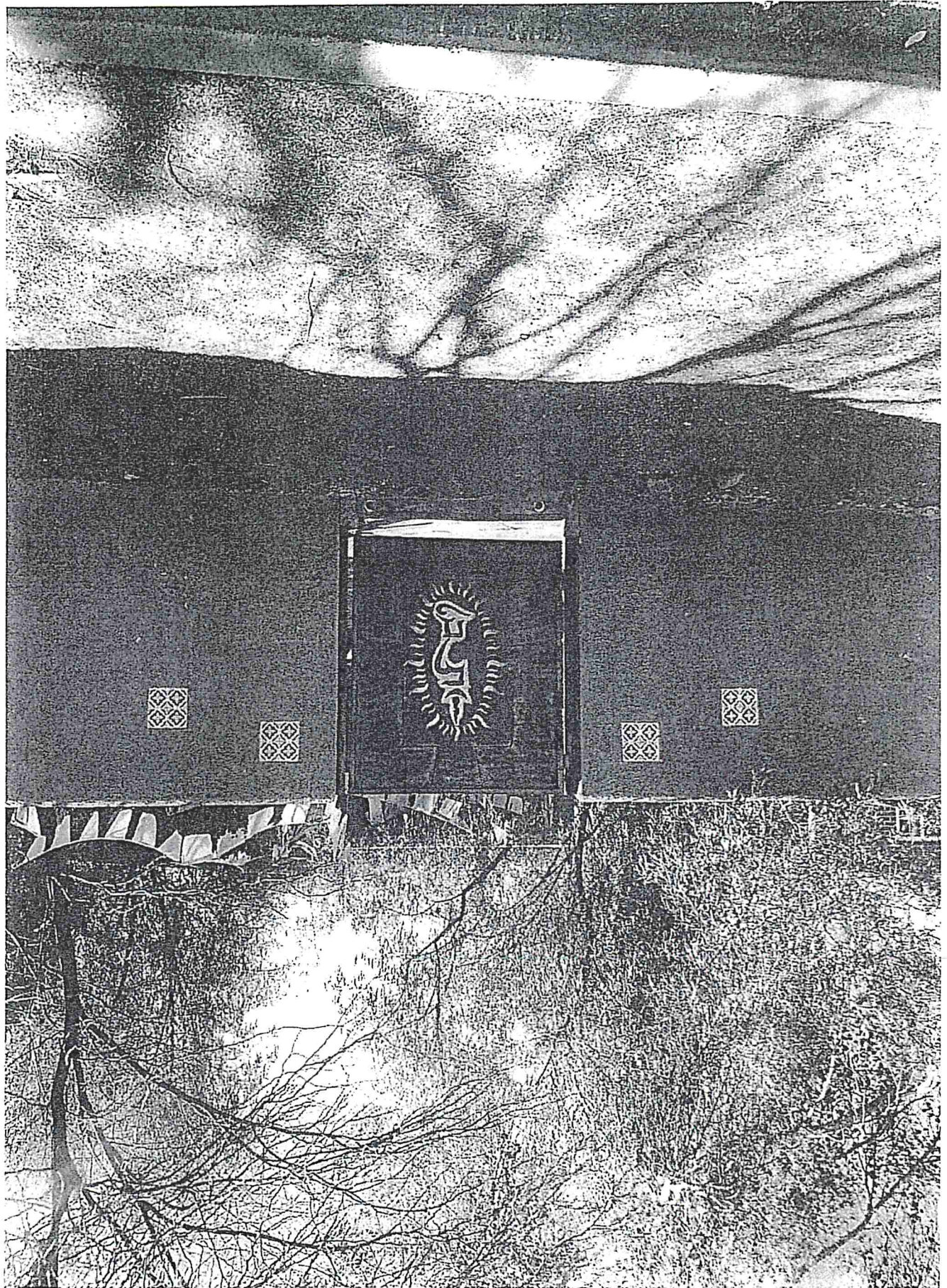
JRC/el

Enclosures

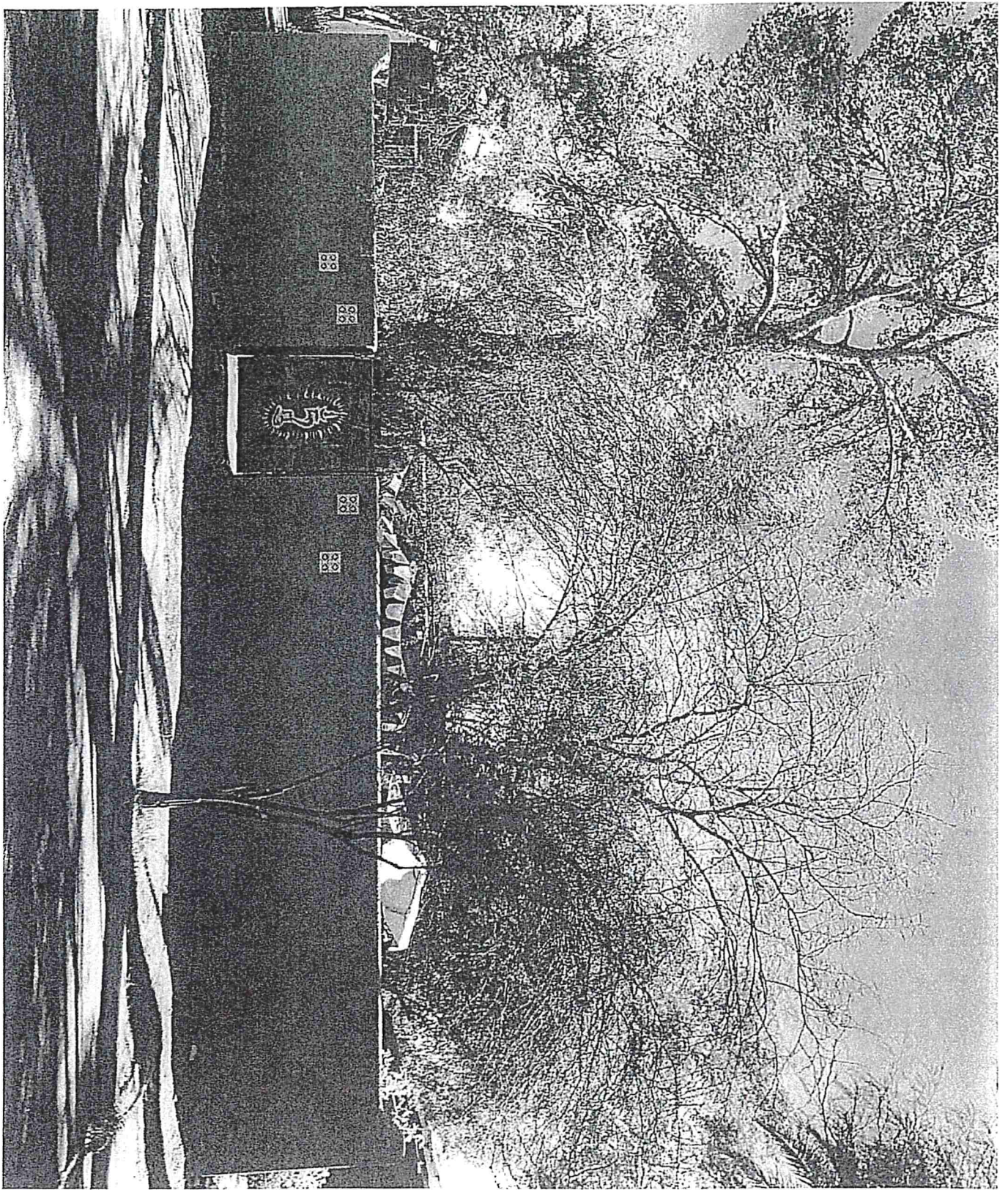




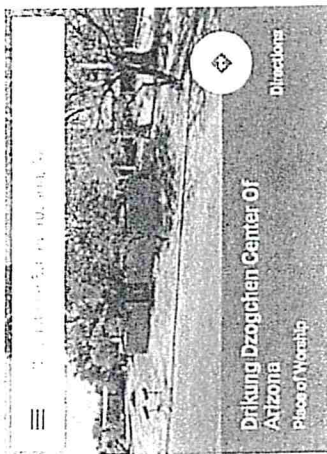










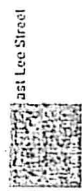


- SAVE
- NEARBY
- SEND TO YOUR PHONE
- SHARE

1038 E Lester St, Tucson, AZ 85719  
iborigdm.org  
(520) 829-7013  
Claim this business  
Add a label  
SUGGEST AN EDIT



Add a photo  
WRITE A REVIEW



Google



# EXHIBIT C



JESSE R. CALLAHAN  
ATTORNEY AT LAW

201 N. Central Avenue  
22<sup>nd</sup> Floor  
Phoenix, AZ 85004-0608  
Main Number: 602-252-1900  
Facsimile: 602-252-1114  
jcallahan@maypotenza.com  
www.maypotenza.com



March 12, 2018

VIA EMAIL TRANSMISSION AND HAND-DELIVERY

Steve Shields  
Carolyn Laurie  
City of Tucson  
Planning & Development Services  
201 N. Stone Avenue  
Tucson, Arizona 85701  
[Steve.Shields@tucsonaz.gov](mailto:Steve.Shields@tucsonaz.gov)  
[Carolyn.laurie@tucsonaz.gov](mailto:Carolyn.laurie@tucsonaz.gov)

RE: Medical Marijuana Authorization Letter  
1525 N. Park Avenue  
Parcel ID No. 123-150-70A & 123-15-0720  
CHAA: 108 Zoning: C-2 Activity #: T17SA0033 and T18SA00085

Dear Mr. Shields:

I respectfully disagree with your response dated March 8, 2018. I believe the City's analysis of the church identified in my prior correspondence is flawed.

In addition, and equally important, I have since discovered that the proposed dispensary site is also within 1,700 feet "from a licensed residential substance abuse diagnostic and treatment facility" and "drug or alcohol rehabilitation facility" operated by COPE Community Services, Inc.

Each of these issues independently disqualifies the proposed dispensary site under Tucson law, as discussed more thoroughly below.

**I. The Drikung Dzogchen Center of Arizona is a Church.**

The City failed to review the church in question under the correct ordinance. The property at 1038 E. Lester hosts The Drikung Dzogchen Center of Arizona, which is in fact

Steve Shields  
Carolyn Laurie  
March 12, 2018  
Page 2

a church under Ordinance 10850, the appropriate regulating ordinance of concern in this matter (the "Ordinance"). The Ordinance intentionally defines a church independently and apart from the zoning codes cited by the City in its March 8<sup>th</sup> letter.

To be clear, the Ordinance defines a "church" as "a building which is erected *or converted* for use as a church, where services are regularly convened which is used primarily for religious worship and schooling and which a reasonable person would conclude is a church by reason of design, signs or other architectural features" (emphasis added). Thus, the fact that the property originated as residential is irrelevant, because it has been converted to religious use.

There is no reference to compliance with any other section of the Unified Development Code ("UDC") in the governing Ordinance. Nor is there any requirement for a church to have a Certificate of Occupancy ("CofO") under the Ordinance. The City's requirement that there be a "recognized legal use" of the property in the form of a CofO and/or be compliant with the UDC is entirely incorrect. The Ordinance does not require or reference any conformity with the remainder of the UDC or require a CofO to qualify as a church in establishing setbacks for dispensaries. Indeed, the manner in which the Ordinance defines a church would be superfluous if the only type of property to qualify as a church are those properties with CofOs. If the Ordinance meant a church only existed if it obtained a CofO, it would incorporate by reference the requirement of a CofO. The Ordinance does not so define a church for the purpose of a setback, instead referring to a demonstrable use and the reasonable belief of a person without reference, requirement, or regard to a formal CofO.

Indeed, the City previously confirmed that property qualifies as a church regardless of CofO status. As set forth in the enclosed correspondence, the City required proof of the 1,000 foot setback from the "church property" located at 1212 N. Sahuara Ave. That church property is zoned residential and no CofO is listed on the City's website for use of that church property as a church.

Moreover, the commercial requirements of the UDC and the definitions of a church established in the Ordinance are severable. This is easily demonstrated by the simple fact that an entity that qualified for commercial religious use under the sections of the UDC cited in your letter, but that did not possess religious architecture, features, or symbols, would conceivably not be a "church" under the Ordinance, which requires these elements in its definition of establishing a setback distance for dispensaries, to wit "... *and* which a reasonable person would conclude is a church by reason of design, signs or other architectural features" (emphasis added).

Applying the relevant criteria, The Drikung Dzogchen Center of Arizona located at 1038 E. Lester Street clearly meets the definition of "church" under the Ordinance provisions that establish setbacks. The property is used primarily for religious worship,



Steve Shields  
Carolyn Laurie  
March 12, 2018  
Page 3

convening regularly with religious patrons who frequent the facility for religious worship, as evidenced by the following websites:

<http://www.lhorigdzin.org/arizona.html>

<http://www.lhorigdzin.org/uploads/8/9/0/2/89023758/drikungdzogchencenterazbrochure.pdf>

<http://network.awaminstitute.org/drikung-dzogchen-az.html>

[https://www.facebook.com/pg/DrikungDzogchenCenterofArizona/about/?ref=page\\_internal](https://www.facebook.com/pg/DrikungDzogchenCenterofArizona/about/?ref=page_internal)

I included photos of the exterior of the church property in my original correspondence, which showed religious symbols, designs, and other features that are prominent indicia of a church.

The Ordinance requires that “a reasonable person” would conclude that the property is a church based on its architecture, features, and symbols. A reasonable person of the Buddhist faith looking at the architecture and symbols of The Drikung Dzogchen Center of Arizona would certainly recognize it as a place of worship. A non-Buddhist reasonable person would concur, because the appearance of the property and the above-cited webpages and photos demonstrate that The Drikung Dzogchen Center of Arizona is a religious center, independent of the religious affiliation, if any, of the “reasonable person.” Although the religious signs and features in question are Buddhist, not Judeo-Christian, the City is constitutionally required to analyze the “reasonable person” test in a neutral, equal, and non-discriminatory manner.

Interestingly, the Applicant in question acknowledged Google Maps as a legitimate basis for determining whether a property is a place of worship, (not merely checking for CofOs), by performing its due diligence using Google Maps and incorrectly attesting to PSDS that no places of worship were located within 1,000 feet. As shown in my prior letter, Google Maps clearly identifies the property at 1038 E. Lester as a “Place of Worship.” Thus, by its own methodology, the Applicant fails to meet its burden of proof that a property identified as a church under the specific language of the Ordinance does not disqualify its petition to locate a dispensary on Park Ave.

**II. COPE Community Services, Inc. Operates a Licensed Residential Substance Abuse Diagnostic and Treatment facility or Other Licensed Drug or Rehabilitation facility Within 1,675 Feet.**

The Ordinance further requires that a “medical marijuana dispensary shall be setback... a minimum of 2,000 feet from a licensed residential substance abuse diagnostic

Steve Shields  
Carolyn Laurie  
March 12, 2018  
Page 4

and treatment facility or other licensed drug or rehabilitation facility." Such facilities are hereinafter referred to as "Treatment Facilities."

According to the City of Tucson Fact Sheet concerning medical marijuana dispensaries, "[i]t is the responsibility of the applicant to research the uses on the surrounding properties and accurately identify the distances and separations as required. Failure to accurately document surrounding uses may result in the revocation of any zoning compliance. The applicant shall provide information explaining what methods were used to identify the surrounding uses and distances."

Unfortunately, the Applicant in this case appears to have failed to properly search the surrounding uses for Treatment Facilities. A basic search with the Arizona Department of Health Services ("AZDHS") confirms that COPE Community Services, Inc. ("COPE") operates a Treatment Facility at 535 E. Drachman, Tucson, AZ 85705, which is approximately 1,675 feet from the proposed dispensary site. The Applicant's application does not reference the requisite search of AZDHS records, inaccurately stating that the closest Treatment Facility is over 3,000 feet away.

It is indisputable that COPE's Treatment Facility "was found to be in compliance with all applicable Articles in the Arizona Administrative Code Title 9, Chapter 10," as set forth in the enclosed licensure documentation from the AZDHS. We have also enclosed a copy of the license for COPE's Behavioral Health Residential Facility. As set forth therein, behavioral health services include providing "services for persons who are at risk of having psychiatric disorders, *harmful involvement with alcohol or other drugs, or other addictions* or who have behavioral health needs" (emphasis added). COPE has operated its Treatment Facility at this location since 1997. We have performed due diligence on COPE's Drachman location to confirm that the Treatment Facility is licensed to provide substance abuse treatment. The Applicant bears the burden to demonstrate that COPE's Drachman location is not a Treatment Facility. Under the circumstances, the Applicant will not be able to do so.

Importantly, the AZDHS specifically licensed COPE's Drachman Treatment Facility. COPE even states on its website the following: "COPE provides residential services to adults with serious mental illness and those who have other behavioral health and/or *substance abuse issues*."

<http://www.copecommunityservices.org/services/behavioral-services/residential-services/>

As set forth *supra*, it was not the City's responsibility to verify the information provided by the Applicant. Rather, it was entirely the Applicant's burden to ensure accurate information was provided to the City. Although the Applicant failed to inform the City of this Treatment Facility, its existence precludes a medical marijuana dispensary at the proposed dispensary location, and the City is left with no choice but to decline the

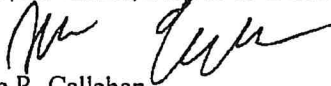
Steve Shields  
Carolyn Laurie  
March 12, 2018  
Page 5

application to renew the zoning approval and/or revoke the prior letter of permission. At this stage, the AZDHS has not issued an approval to operate the subject dispensary, and the information provided by the Applicant upon which the City relied appears to have been woefully inaccurate.

Accordingly, I respectfully ask you to consider the foregoing points and decline to renew the letter of permission for the proposed dispensary site identified above and/or revoke the prior letter of permission. If you have any questions, please contact me.

Sincerely,

MAY, POTENZA, BARAN & GILLESPIE, P.C.

  
Jesse R. Callahan

JRC/el

cc:  
Piroshchka Glinsky, City Attorney's Office,  
[Piroshchka.Glinsky@tucsonaz.gov](mailto:Piroshchka.Glinsky@tucsonaz.gov)  
Mike Rankin, City Attorney's Office,  
[mike.rankin@tucsonaz.gov](mailto:mike.rankin@tucsonaz.gov)





### Accepted Insurance Plans

Search...

### Join our mailing list

Select Language ▼

### Navigation Menu

- [Home](#)
- [About COPE »](#)
- [Services »](#)
- [Careers »](#)
- [Members »](#)
- [News & Events](#)
- [Resources](#)
- [Contact Us »](#)
- [HomeHome](#)
- [About COPE »About COPE »](#)
- [Services »Services »](#)
- [Careers »Careers »](#)
- [Members »Members »](#)
- [News & EventsNews & Events](#)
- [ResourcesResources](#)
- [Contact Us »Contact Us »](#)

[Home](#) > [Services](#) > [Behavioral Health Services](#) > Residential Services

## Residential Services

COPE provides residential services to adults with serious mental illness and those who have other behavioral health and/or substance abuse issues. Services are provided in community facilities that provide individualized care and may include the following:

- Supervision 24 hours a day, 7 days a week
- Counseling for behavioral health issues
- Medication supervision (providing storage, reminders, and observation of clients taking medications)
- Instructions in daily living skills (hygiene, budgeting, cooking, shopping, resources, etc.)
- Social and recreational activities
- Establishing positive daily routines
- Transportation to appointments for medical, financial, and legal needs

*For more information about residential services, please call COPE's Intake Department at 520.205.4732.*

**For additional information on COPE's Behavioral Health Services [click here](#).**

**Medical & Health News**

**COPE Community Services, Inc.**

82 S. Stone Avenue  
Tucson, AZ 85701  
Phone: (520)792-3293  
Fax: (520)792-4336  
[communications@copecommunityservices.org](mailto:communications@copecommunityservices.org)

[Donate to COPE](#)

- [Home](#)
- [About COPE](#)
- [Services](#)
- [Careers](#)
- [Patients & Members](#)
- [News & Events](#)
- [Resources](#)
- [Contact Us](#)
- [Privacy Policy](#)
- [Nondiscrimination & Accessibility](#)

© COPE Community Services, Inc. | All Rights Reserved

PROPERTY OF THE  
ARIZONA DEPARTMENT OF HEALTH SERVICES



COPE Community Services, Inc., dba  
COPE Community Services, Inc.  
535 East Drachman  
Tucson, AZ 85705

This facility is licensed to operate as a(n) Behavioral Health Residential Facility

Total Capacity: 15

From: September 1, 2017 To: August 31, 2018

Issued: July 12, 2017

License: BH1469



PURSUANT TO A.R.S. §41-1092.11 (A), UPON SUBMITTAL OF A TIMELY AND SUFFICIENT APPLICATION  
THIS LICENSE WILL REMAIN IN EFFECT UNTIL REISSUED OR REVOKED  
TO BE FRAMED AND DISPLAYED IN A CONSPICUOUS PLACE

A handwritten signature in cursive script, appearing to read "Harmony Duport".

Recommended By: Harmony Duport, Bureau Chief

A handwritten signature in cursive script, appearing to read "Colby Bower".

Issued By: Colby Bower, Assistant Director

HEALTH AND WELLNESS FOR ALL ARIZONANS



## H. Quality Records Management

### Description

The organization has systems and procedures that provide for the ongoing monitoring of the quality, appropriateness, and utilization of the services provided. This is largely accomplished through a systematic review of the records of the persons served. The review assists the organization in improving the quality of services provided to each person served.

### Key Areas Addressed

- ☒ Quarterly professional review
- ☒ Review current and closed records
- ☒ Items addressed in quarterly review
- ☒ Use of information to improve quality of services

### Recommendations

H.4.e.

H.4.h.(1)

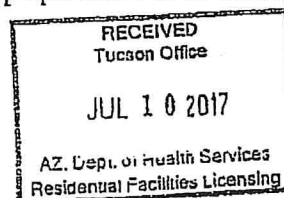
H.4.h.(2)

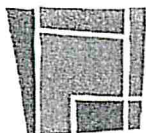
The records review process should also address whether the actual services were related to the goals and objectives in the person's plan and a transition plan and/or discharge summary was completed, when applicable.

## SECTION 3. BEHAVIORAL HEALTH CORE PROGRAM STANDARDS

### Description

The standards in this section address the unique characteristics of each type of core program area. Behavioral health programs are organized and designed to provide services for persons who have or who are at risk of having psychiatric disorders, harmful involvement with alcohol or other drugs, or other addictions or who have other behavioral health needs. Through a team approach, and with the active and ongoing participation of the persons served, the overall goal of each program is to improve the quality of life and the functional abilities of the persons served. Each program selected for accreditation demonstrates cultural competency and relevance. Family members and significant others are involved in the programs of the persons served as appropriate and to the extent possible.





ARIZONA DEPARTMENT  
OF HEALTH SERVICES

LICENSING

Statement of Deficiencies

Survey Date - 7/5/2017

COPE COMMUNITY SERVICES, INC

535 EAST DRACHMAN

TUCSON, AZ 85705

(520) 792-3293

Facility ID: BH1469

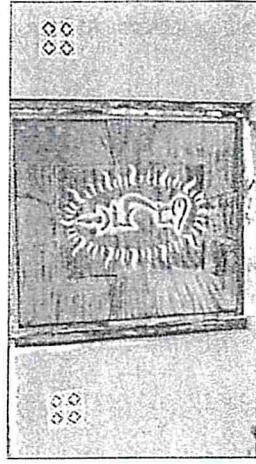
License: BH1469

Based on Commission on Accreditation of Rehabilitation Facilities report for this behavioral health residential, submitted to the Department of Health Services, Cope Community Services, Ocotillo Residential, was found to be in compliance with all applicable Articles in the Arizona Administrative Code Title 9, Chapter 10 on July 5, 2017 for the licensure year September 1, 2016 through August 31, 2017. No on-site inspection was conducted.

Ann Pearson, RN, BSN, MS      Date:  
State Licensing Surveyor

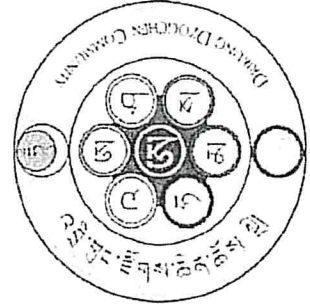


# DRIKUNG DZOGCHEN CENTER OF ARIZONA

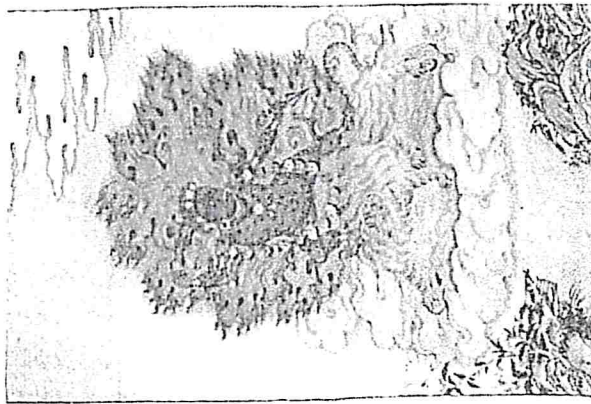


1038 E. LESTER ST.  
TUCSON, AZ 85719

TEL. (520) 829-7013  
MKARUNA@COX.NET



THE DRIKUNG DZOGCHEN CENTER OF ARIZONA WAS FOUNDED IN 2014 BY VENERABLE ONTUL KINPOCHE. GRATEFUL ACKNOWLEDGEMENT IS ALSO MADE TO CLIFF LEFTWICH FOR THE MANY BLESSINGS AND DONATIONS OVER THE YEARS THAT HAVE MADE OUR SHRINE ROOM POSSIBLE, IN WHICH OUR DEVOTED MISSION HAS BEEN AND WILL CONTINUE TO BE TO BRING BENEFIT TO ALL BEINGS. MAY ALL BEINGS HAVE HAPPINESS AND THE CAUSES OF HAPPINESS. SARVA MANGALAM.



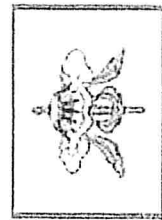
## MEDITATION SCHEDULE

Monday @ 7 pm: Dorje Drolo

Wednesday @ 7 pm: Kalden Dendze, "A Guide to the Fortunate" (specifically for protection against war, famine, and plague)

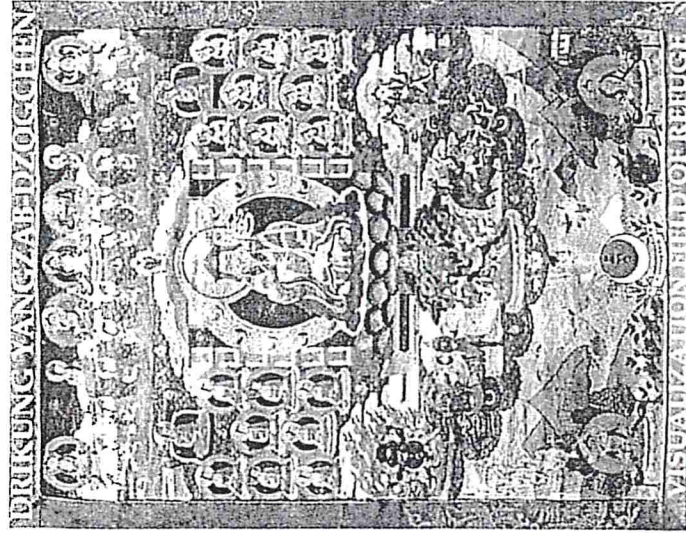
Saturday @ 10 am: Introduction to Tibetan Buddhism (call for more info)

Saturday @ 11 am: Riwo Sang Chod smoke offering



## The Practice of Tibetan Buddhism

What is the basis of who we are? Most go through life in search of external conditions to satisfy our need for fulfillment and happiness, and yet find such searching to be ultimately fruitless, as all things eventually decay and are lost. In this way, life is so often full of suffering because we base it on the need for gain rather than an acceptance of how things are in their natural state. In this light, the practice of Buddhism focuses on cultivating and refining our natural state of awareness, what has been and always will be the source of ultimate happiness.



## "LIFE IS NOT SUFFERING: LIFE HAS THE NATURE OF SUFFERING AND IS BEAUTIFUL." - ZA CHOEJE RINPOCHE

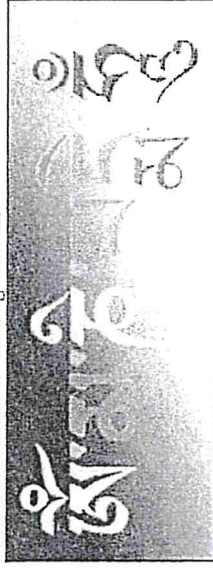
In particular, Tibetan Vajrayana Buddhism provides very powerful methods of visualization and mantra recitation to awaken one to one's primordial mind-state, the ultimate ground of all phenomena and our awareness of it as integrally the same essence. One begins with the four thoughts that turn the mind:

First, everything is impermanent. There is nothing that has any ultimate solidity and lasting state of fixity in time and space.

Second, we have this precious human life, so brief and so rare in the firmament of all life-forms, and the only kind of embodiment that provides any real opportunity to advance ourselves toward enlightenment.

Third, there is the law of cause and effect or Karma, to which we continually find ourselves bound, always carrying us forward from one life to the next, endlessly.

Finally, there are the basic defects of "Samsara," the suffering of gradual change, the suffering of sudden change, and the suffering of suffering itself, as well as the sufferings of birth, old age, sickness, death, getting what we don't want, not getting what we do, the loss of loved ones, and the fear of meeting enemies.



In contemplating and realizing the nature of these Four Thoughts, as well as all causes of suffering, one realizes the necessity of cultivating inner happiness. Through the practices of deity and guru yoga of Vajrayana Buddhism, one transcends the ordinary perceptions that give rise to attachment and enters into a state of awareness of oneself as the essence of the deity or sambhogakaya (light-body). One enters into one's natural pure essence state of loving-kindness and compassion.

## THE DRIKUNG DZOGCHEN LINEAGE

### About Venerable Ontul Rinpoche

Ontul Rinpoche received Mahamudra and Dzogchen teachings from H.H. Dalai Lama, H.H. Kyalgon Chetsang Rinpoche, H.H. Dudjom Rinpoche, H.H. Dilgo Khyentse Rinpoche, Yogi Pachung Rinpoche, Polo Khanchen Dorje, Ven. Khamu Lama Tenzin Gyalsen, Kyabje Kalu Rinpoche, Khenpo Khedrup Rinpoche and others. From the yogi Chyungpa Rinpoche, Ontul Rinpoche received teachings and his personal instructions on the Drigung Kagyu Five-Fold Profound Path of Mahamudra. In the years which followed, Ontul Rinpoche went to Drigung Kagyu Monasteries in Ladakh where he received most of the important empowerments, instructions and oral transmissions of the Drigung Kagyu tradition from H.E. Choje Togsden Rinpoche.

Ven. Ontul Rinpoche holds both the unbroken lineages of the Akha Mudra and Akha Aji transmission of Drigung Kagyu and Nyingma. Rinpoche is a well known Dzogchen Master who has the blessings from His Holiness Dalai Lama, H.H. 16th Gyalsei Karmapa and His Holiness Drigung Kyalgon Chetsang Rinpoche and has many students all over the world in generously sharing precious Dharma to those interested in learning and practicing.

### About The Director

Tom Cox has been practicing the Dharma for 24 years, in which his principal teachers are Ven. Ontul Rinpoche, Ven. Khanchen Gyalsen Rinpoche, H.E. Garchen Rinpoche, H.E. Jigme Ledro Rinpoche, H.H. Do Khentse Rinpoche and Yogi Lama Gursam. He has written a number of books of poetry, including "The Lotus King," an epic re-telling of the life-story of Padmasambhava.







CITY OF  
TUCSON

PLANNING AND  
DEVELOPMENT  
SERVICES  
DEPARTMENT

ZONING  
ADMINISTRATION  
DIVISION

7/22/2016

Samuel Capin  
ALFA Delta Foundation  
2050 N. Smokey Lane  
Nogales AZ 85621

Subject: Medical Marijuana Authorization Letter  
5751 E. Speedway Blvd  
Parcel ID No. 121-06-4070  
CHAA: 109      Zoning: C-2      Activity #: T16SA00313

Dear Mr. Capin:

Planning and Development Services Department (PDSD) has reviewed the materials provided with the application for a proposed Medical Marijuana Dispensary Location at 5751 E. Speedway Blvd as regulated by City of Tucson Ordinance No. 10850, 11199, and 11346. Based on the information you have provided the subject site is in general compliance with Ordinance No. 10850, 11199, and 11346, subject to the following condition:

- A survey showing that the proposed dispensary location meets the required 1000' setback to the church properties located at 5901 E. 2<sup>nd</sup> Street and 1212 N. Sahuara Avenue. This survey shall be done by a registered land surveyor.

This letter will provide authorization for proceeding with all required permits necessary to comply with City regulations and will vest the subject site as a Medical Marijuana Dispensary Location for City of Tucson purposes for one (1) year from the date of this letter. The subject site will be considered to be fully vested upon issuance of an Arizona Department of Health Services (ADHS) Certification and issuance of applicable City of Tucson building permits.

Zoning compliance is specifically contingent upon ADHS approval of your application. The City of Tucson is aware of other applications for zoning approval within the subject CHAA. Prior approval of any Medical Marijuana dispensary(ies), by ADHS, whose location would be within 2000 feet of your proposed dispensary, or which would result in no further approval of dispensaries within the CHAA, pursuant to ADHS regulations, would render this approval null and void.

NOTICE: The information provided herein is solely related to compliance with the City of Tucson land use regulations. Nothing herein is intended to express any opinion regarding compliance with federal or state laws or any lawful, applicable health regulations, including those promulgated by the Arizona Department of Health Services and any other authorized agency.

Sincerely,

Carolyn Laurie  
Principal Planner  
City of Tucson - Planning and Development Services Department

C: Piroshka Glinsky, City Attorney's Office

